TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 258.

AMANDA S. WHITFIELD AND THE STATE OF MISSOURI AT THE RELATION OF HERBERT S. HADLEY, ATTORNEY GENERAL, PETITIONERS,

vs.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

PETITION FOR CERTIORARI FILED APRIL 17, 1906.
CERTIORARI AND RETURN FILED MAY 7, 1906.

(20,203.)

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1 UNITED STATES OF AMERICA, *sct:*

To Aetna Life Insurance Company of Hartford, Connecticut, Greeting:

You are hereby cited and admonished to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the City of St. Louis, Missouri, sixty days from and after the day this citation bears date, pursuant to a writ of error filed in the Clerk's Office of the Circuit Court of the United States for the Western Division of the Western District of Missouri, wherein Amanda M. S. Whitfield is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned should not be corrected, and why speedy justice should not be done the parties in that behalf.

Witness, the Honorable Jno. F. Philips, Judge of the Circuit Court of the United States for the Western Division of the Western District of Missouri, this 25th day of November, in the year of our Lord one thousand nine hundred and three.

JNO. F. PHILIPS, *Judge.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, sct:

We hereby acknowledge due service of the within Citation this 25th day of November A. D. 1903.

JONES, JONES & HOCKER,
BOYLE, GUTHRIE, HURT & DAVISON,
Attorneys for Defendant in Error.

2698. United States Circuit Court. Western District of Missouri, Western Division. Amanda M. S. Whitfield *vs.* Aetna Life Ins. Co. Citation. Filed Nov. 25, 1903. Adelaide Utter, Clerk.

UNITED STATES OF AMERICA, *sct:*

The President of the United States of America to the Honorable Judges of the Circuit Court of the United States for the Western Division of the Western District of Missouri, Greeting:

Because, in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said Circuit Court before you, at the November Term, 1903, thereof, between Amanda M. S. Whitfield as plaintiff, and Aetna Life Insurance Company of
2 Hartford, Connecticut, a manifest error hath happened, to the great damage of the said plaintiff Amanda M. S. Whitfield as by her complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record

and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals, for the Eighth Circuit, together with this writ, so that you have the said record and proceedings aforesaid at the City of St. Louis, Missouri, and filed in the office of the Clerk of the United States Circuit Court of Appeals, for the Eighth Circuit, on or before the first Monday in December, 1903, to the end that the record and proceedings aforesaid being inspected, the United States Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said Circuit Court.

Issued at office in Kansas City, this 25th day of November, in the year of our Lord one thousand nine hundred and three.

[Seal of the United States Circuit Court for the Western District of Missouri, Western Division.]

ADELAIDE UTTER, *Clerk.*

Allowed by
JNO. F. PHILIPS, *Judge.*

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, sct:

In obedience to the command of the within Writ, I herewith transmit to the United States Circuit Court of Appeals, a duly certified transcript of the record and proceedings in the within entitled case, and with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of said Circuit Court of the United States for the Western Division of the Western District of Missouri.

Issued at office in Kansas City, this 3rd day of December, A. D. 1903.

[Seal of the United States Circuit Court for the Western District of Missouri, Western Division.]

ADELAIDE UTTER, *Clerk.*

2698. United States Circuit Court. Western District of Missouri. Western Division. Amanda M. S. Whitfield *vs.* Aetna Life Ins. Co. Writ of Error. Filed Nov. 25, 1903. Adelaide Utter, Clerk.

3 UNITED STATES OF AMERICA, *sct:*

Be it remembered that heretofore, to-wit, on the 6th day of October, 1902, there was filed in the office of the clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, a petition in a case wherein Amanda M. S. Whitfield is plaintiff and Aetna Life Insurance Company is defendant.

Said petition is in words and figures as follows, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Petition.

Plaintiff, Amanda M. S. Whitfield, a citizen and resident of the Western District of Missouri, brings this, her action against the Aetna Life Insurance Company, a corporation organized and existing under the laws of Connecticut, with its chief office therein, the matter and amount in dispute herein exceeding exclusive of interest and costs, the sum or value of two thousand dollars ($2,000.00), and thereupon the plaintiff avers:

1. Defendant is a corporation organized and existing under the laws of the State of Connecticut, engaged in the life and accident insurance business, is now and was at all the times hereinafter named qualified to do business in this state, having fully complied with the laws thereof and obtained and held a certificate and license to do business therein.

2. In consideration of the payment to it of the premium therein named, the defendant did on November 3rd, 1900, issue, execute and deliver to James Whitfield, at Kansas City, Missouri, a policy of insurance in words and figures as follows:

"Twentieth Century Combination.

Principal sum $5000.00. Accident Policy. Premium $6.25.

The Aetna Life Insurance Company, of Hartford, Conn.

In consideration of the warranties made in the application for this insurance and of the sum of six 25/100 dollars, does hereby insure James Whitfield of the town of Kansas City, County of Jackson, State of Missouri, under Classification Preferred, being a Sporting Editor K. C. Star by occupation, for the term of 3 months from the 29th day of Nov. 1900, (commencing and ending at
4 twelve o'clock, noon, standard time, in the sum of twenty-five no/100 dollars per week indemnity against loss of time resulting from bodily injuries effected, during the term of this insurance, through External Violence, and Accidental Means, which shall, independently of all other causes, immediately, continuously and wholly disable him from prosecuting any and every kind of business pertaining to his occupation, above stated; or if such injuries shall not wholly disable the Insured, as above, but shall immediately, continuously, and wholly disable him from the performance of one or more important daily duties pertaining to his occupation, or if, following a period of total disability resulting from such injuries,

he shall be in like manner partially disabled, the Company will pay two-fifths of the weekly indemnity herein provided for total disability for the period of such partial disability, but not for more than twenty-six consecutive weeks of partial disability, nor will payments be made for total disability or total and partial disability combined exceeding in amount the principal sum insured by this policy as stated in clause '*e*.'

Claims for weekly indemnity of less than two months' duration shall be payable upon presentation of satisfactory affirmative proof of total or partial disability and that same was the proximate result of external, violent and accidental means within the conditions of this policy; claims of longer duration shall be payable at the expiration of two months from date of accident and at intervals of two months thereafter, such affirmative proof of disability and of its continuance being furnished before each payment, final proof in all cases to be furnished in accordance with condition six.

a. If such injuries alone result within ninety days in loss by removal of Both Hands at or above the wrists, or Both Feet at or above the ankles, or One Hand and One Foot at those places, or the irrecoverable loss of the entire sight of both eyes, then the insured shall be paid the Full Principal Sum, insured in lieu of weekly indemnity as herein provided, and this policy shall thereupon cease and be surrendered to the Company.

b. If such injuries alone result within ninety days in loss by removal of right hand at or above the wrist, or either leg at or above the knee, the Insured shall be paid one-half the principal sum insured in lieu of weekly indemnity as herein provided, and this policy shall cease and be surrendered to the Company.

c. If such injuries alone result within ninety days in loss by removal of the Left Hand at or above the wrist, or either foot at or above the ankle, the insured shall be paid one-fifth of the principal sum insured in lieu of weekly indemnity as herein provided, and this policy shall cease and be surrendered to the Company.

d. If such injuries alone result within ninety days in the irrecoverable loss of the entire sight of one eye, the insured shall be paid one-eighth the principal sum insured in lieu of weekly indemnity as herein provided.

e. If death results solely from such injuries within ninety days, the said Company will pay the principal sum of five thousand no/100 dollars to Amanda M. S. Whitfield, his wife, if living; and in event of the death of the said beneficiary before the death of the Insured, to the executors, administrators, or assigns of the insured.

f. If injuries are sustained by means as aforesaid, (1) while the insured is riding as a passenger in or on any public passenger conveyance, using steam, compressed air, gasoline, cable or electricity as a motive power, or (2) while riding in a regular passenger elevator, or (3) while riding a bicycle (not in a race for prize or purse, concerning which risk, see condition two) or (4) in consequence of the burning of a building in which the Insured shall be at the commencement of the fire, the amount to be paid shall be double the sum

specified in the clause under which claim is made, subject to all the conditions of this policy.

This Policy is issued and accepted subject to the following conditions:

1. There shall be no insurance under this policy or any renewal hereof unless the premium is actually paid prior to any accident by reason of which claim is made. The Company reserves the right to cancel this policy at any time, by refunding to the insured the amount of said premium, less, a pro rata share for the time the policy has been in force.

2. If the Insured is injured in any occupation or exposure classed by this Company higher than the premium paid for this policy covers, the principal sum insured and weekly indemnity shall be only such amounts as said premium will purchase at the rate fixed for such increased hazard. If accidentally injured while riding a bicycle in a race for prize or purse, the amounts payable will be one-third of the double benefits provided by clause '*f*' hereof.

3. This insurance does not cover disappearance; nor the result, fatal, or otherwise, of injuries of which there is no visible mark upon the body (except as hereinafter provided); nor in event of accident or death, loss of limb or sight, or disability resulting wholly or partly, directly or indirectly, from bodily or mental infirmity,
6 or disease in any form; nor does it cover injuries, fatal or otherwise, resulting from fits, vertigo, somnambulism, medical or surgical treatment, war, duelling, or violating law; nor does it cover (except as incident to the occupation of railway employés) entering or trying to enter or leave a moving conveyance using steam or electricity as a motive power (except cable and electric street cars), being in any place in or on any such conveyance which has not been provided for the occupation of passengers during transit, or walking or being on any railroad bridge or roadbed, except at established crossings of such roads with public highways. Clause '*f*' above shall not apply to accidents happening while the Insured is boarding or alighting from a street car.

4. In event of death, loss of limb or sight, or disability due to sunstroke of freezing; or due to unnecessary exposure to obvious risk of injury or obvious danger; or due to contact with poisonous substances other than to the septic poisoning of wounds accidentally inflicted; or due to hernia, the result of an accident happening subsequent to the issue of this policy; or in event of death following bodily injuries of which there existed no external or visible mark upon the body of contusion or wound sufficient to cause death (accidental drowning only excepted) and an autopsy showed that such injuries contributed materially to the death of the Insured, then in all such cases referred to in this paragraph, the limit of this Company's liability shall be one-fifth the amount otherwise payable under this policy, anything to the contrary in this policy notwithstanding.

5. In event of death, loss of limb or sight, or disability due to injuries intentionally inflicted upon the Insured by any other person (except assaults committed for the sole purpose of burglary or robbery), whether such other person be sane or insane, or under the

influence of intoxicants or not; or due to injuries received while fighting or in a riot; or due to injuries intentionally inflicted upon the Insured by himself; or due to suicide, sane or insane; or due to the taking of poison, voluntarily or involuntarily, or the inhaling of any gas or vapor; or due to injuries received while under the influence of intoxicants or narcotics, then in all such cases referred to in this paragraph, the limit of this Company's liability shall be one-tenth the amount otherwise payable under this policy, anything to the contrary in this policy notwithstanding.

6. Immediate notice in writing of any accident or injury on account of which claim is to be made shall be given said Company at Hartford, Conn., with full particulars and full name and address of the Insured; and unless affirmative proof of death, loss of limb or sight, or duration of total or partial disability, and that the
7 same was the proximate result of external, violent and accidental means, is so furnished within five months as to death, loss of limb or sight, from the happening of such accident, or within two months from the termination of total or partial disability, or in case of claim for the full limit, final claim be made within two months from the termination of such limit, the Company shall be released from all liability for the payment of any claim based thereon. No legal proceedings shall be brought to recover any sum hereby insured within ninety days after receipt of proof at Hartford, nor at all, unless commenced within one year from date of the alleged accident as to death, loss of limb or sight, or within six months from the filing of claim with the Company as to total or partial disabiliy.

7. No claim against this Company under accident policies shall be valid in excess of ten thousand dollars (or twenty thousand dollars under clause '*f*' above) or fifty dollars weekly indemnity (or one hundred dollars weekly indemnity under clause '*f*' above), nor for weekly indemnity in excess of the average weekly earnings of the Insured. If the insured has insurance for weekly indemnity in excess of his average weekly earnings, this Company's liability for weekly indemnity shall not exceed its pro rata share of the average weekly earnings of the insured. The weekly indemnity for partial disability shall not [exceed] two-fifths of the liability of the Company for weekly indemnity for total disability under this condition. All premiums paid this Company for insurance in excess of such liability shall be returned, upon demand, to the Insured or his legal representatives.

8. The maximum liability of the Company hereunder in any policy year shall not exceed the principal sum hereby insured, and in no event will claim for weekly indemnity be valid if claim is also made for any of the stated amounts herein provided for specified injuries based upon he same accident and resulting injuries.

9. All claims under this policy shall be subject to proof of interest. A copy of any assignment shall be given to the Company within thirty days. The Company will assume no responsibility for the validity of assignments.

10. Any medical examiner of the Company shall be allowed, as

often as he requires, to examine the person or body of the insured, in respect to alleged injury or cause of death. In case of autopsy being held the Company shall have due notice and opportunity for its medical examiner to be present and participate therein.

11. This insurance does not cover injuries received in wild, uninhabited or uncivilized regions, nor in any part of North
8 America, lying north of the fifty-fifth degree of north latitude, nor in Europe and Asia north of the sixtieth degree of north latitude.

12. No agent has authority to waive or change any condition or provision of this policy, nor shall it be claimed that the Company or agent has knowledge of any risk or exposure which is not set forth in the application herefor; and no waiver or change nor the issue of any permit will be valid unless in writing, signed by either the President, Vice-President, Secretary or Assistant Secretary of the Company.

13. The insured on the acceptance of this policy, makes the following statements, which he warrants to be true.

I have no other insurance in this Company, and no other accident insurance in any company or association, and have made no application for accident insurance upon which I have not been notified of the action thereon, except as herein stated. No application made by me for accident insurance has ever been declined, and no accident policy issued to me has ever been canceled by this or any other company or association, except as herein stated.

I have not in contemplation any special journey, nor any hazardous undertaking not required by my occupation as above described, except as herein stated.

My hearing or vision is not impaired, I have never had, nor am I subject to, fits, diseases of the brain, bodily or mental infirmity, except as herein stated.

In Witness Whereof, The Aetna Life Insurance Co., has caused these presents to be signed by its President and Secretary, but the same shall not be binding unless countersigned by Drennon & Mastin, General Agents, at Kansas City, Mo.

M. G. BULKELEY, *President.*

J. L. ENGLISH, *Secretary.*

Countersigned at Kansas City, Mo., this 3rd day of Nov. 1900.

DRENNON & MASTIN,
General Agents.

Said policy was from time to time and continuously renewed by the payment of quarterly premiums in advance, so that the same was in full force and effect at the time of his death.

3. On April 7th, 1902, while said policy was in force, at Kansas City, Missouri, James Whitfield died from bodily injuries effected through external, violent and accidental means and by a pistol shot.

9 4. Plaintiff Amanda M. S. Whitfield, was at the time of the issuance of said policy and of his death the wife of said James Whitfield and is now his widow.

5. Immediately upon the accident to and death of James Whitfield, the said Amanda M. S. Whitfield gave notice in writing to defendant at Hartford, Connecticut, with full particulars and full name and address of the assured and demanded payment of the amount of the policy, and at the request of defendant afterwards, on May 3rd, 1902, gave a more detailed proof, and the defendant made its own investigation and waived any further proof, offering to pay plaintiff the sum of five hundred dollars as the full amount due by virtue of Section 5 of the policy but then and thereafter refused to pay any further sum, although it was demanded.

Wherefore plaintiff demands judgment for $5000 with six per cent. interest from April 7th, 1902, and costs.

A. F. SMITH,
FRANK HAGERMAN,
Attorneys for Plaintiff.

STATE OF MISSOURI, *County of Jackson, ss:*

I, A. F. Smith, on oath say: I am one of the attorneys for plaintiff; a true copy of the policy of insurance sued upon is set forth in the foregoing petition.

A. F. SMITH.

Subscribed and sworn to before me this 6th day of October 1902.
[SEAL.] OSCAR HOCHLAND,
Notary Public Within and for Jackson County, Missouri.

My commission expires September 4th, 1904.

Thereupon a writ of summons was issued in the above entitled case, which writ with the return of the Marshal thereon indorsed was returned into court and filed on the 11th day of October, 1902, and is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA,
Western Division of the Western District of Missouri, ss:

The President of the United States of America to the Marshal of the United States for the Western District of Missouri, Greeting:

You are hereby commanded to summon Aetna Life Insurance Company of Hartford, Connecticut, doing business in the state of Missouri, and the Western Division of the Western District thereof, to be and appear before the Honorable Circuit Court of the United States, in and for the Western Division of the Western District of Missouri, on the first day of the next term thereof, to be begun and holden at Kansas City, in said District, on the first Monday, the 3rd day of November next; then and there to answer to complaint of Amanda M. S. Whitfield, a citizen of the state of Missouri, as set forth in the petition filed in the office of the clerk of said court, on the 6th day of October A. D. one thousand nine hundred and two.

Hereof fail not, and have you then and there this writ.

Witness the Honorable Melville W. Fuller, Chief Justice of the

Supreme Court of the United States the 7th day of October, A. D. nineteen hundred and two.

Issued at office, in Kansas City, in said District, under the seal of said Circuit Court, the day and year last aforesaid.

[SEAL.] ADELAIDE UTTER, *Clerk.*

WESTERN DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

I do hereby certify that I served the within Writ by delivering a true copy thereof, together with a true copy of the petition in the cause to Thomas H. Mastin, Jr., General Agent of the within named Aetna Life Insurance Company (Accident Department) at the offices of said Company in Kansas City, Jackson County, Missouri, this 7th day of October, 1902, the President [ot] other chief officer of said Company being not found in my district.

All done in the Western Division of the Western District of Missouri, as aforesaid.

E. R. DURHAM,
United States Marshal,
By J. E. MORRISON, *Deputy.*

Thereafter, to-wit, on the 16th day of October, 1902, said writ of summons was refiled with the following additional return of the Marshal indorsed hereon:

CENTRAL DIVISION OF THE WESTERN DISTRICT OF MISSOURI, *sct:*

I hereby certify that I served the within writ by delivering a true copy thereof, together with a true copy of the petition in said cause to Ed. E. Yates, Insurance Commissioner of the state of Mis-
11 souri at his office in the city of Jefferson, in the county of Cole and State of Missouri, on the 15th day of October, 1902.

All done in the Central Division of the Western District of Missouri.

E. R. DURHAM,
U. S. Marshal,
By T. H. McKENNA, *Deputy.*

Thereafter, to-wit, on the 22nd day of December, 1902, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INS. CO.

This day comes defendant by its attorneys and files answer. Said answer is in words and figures as follows to-wit:

In the United States Circuit Court of the Western Division of the Western District of Missouri, at Kansas City.

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Answer.

Now comes the defendant and admits that plaintiff is a resident of the Western District of Missouri; that the defendant is a corporation of the state of Connecticut, and that the amount sued for herein exceeds $2,000 exclusive of interest and costs.

Admits each and every of the allegations contained in paragraphs one (1) and (2) of the petition, to-wit, admits that defendant is a corporation of the State of Connecticut engaged in the life and accident insurance business and that it is now and at all times stated in the petition was qualified to do business in the state of Missouri, having fully complied with the laws thereof and obtained and held a license to do business therein and admits that in consideration of the payment to it of the premium therein named, defendant on November 3, 1900, issued, executed and delivered to James Whitfield at Kansas City, Missouri, the policy sued on in this case, which was in words and figures as set forth in the petition and that said policy was from time to time renewed and was in full force and effect at the time of the death of James Whitfield.

Denies each and every of the allegations of paragraph three (3) of the petition.

Admits that James Whitfield died on April 7th, 1902, at Kansas City, Missouri, while the policy sued on was in full force but
12 denies that he died from bodily injuries effected through external violent and accidental means, but admits that he died from bodily injuries caused by a pistol shot but alleges that said injury and death was not accidental, but was caused by a pistol shot intentionally fired by said James Whitfield for the purpose of taking his own life and that the cause of the death of said Whitfield was suicide.

Defendant admits each and every allegation of paragraph four (4) and five (5) of said petition, to-wit, that plaintiff was at the time of the issuance of said policy, and at the time of his death the wife and is now the widow of James Whitfield, and that plaintiff gave immediate and sufficient notice of the death of said James Whitfield, and demanded payment of the policy and afterwards on May 3, 1902, at defendant's request made detailed proof of such death and that defendant made an investigation of said death and waived further proof and offered plaintiff $500 as the full amount due under said policy and then and thereafter refused to pay any further sum.

Further answering said petition defendant alleges that the contract sued upon is a policy of accident insurance and insured the said James Whitfield against loss of time resulting from bodily injuries effected through external, violent and accidental means in a specified sum weekly during disability as well as against death resulting from bodily injuries effected through external, violent and accidental means in the principal sum of five thousand dollars but further provides that if such injuries are received while insured is riding in a passenger conveyance or elevator or on a bicycle or in a burning building the amount to be paid shall be double the principal sum or $10,000; that if death is due to sunstroke or freezing or the result of unnecessary exposure to obvious risk or to contact with poisonous substances, or hernia, or where there is no visible mark on the body, then the amount to be paid shall be one-fifth of the principal sum or $1000; and further provides that in the event death is caused by intentional injuries inflicted by the insured or any other person, whether such person be sane or insane, or while fighting or in a riot, or by suicide, sane or insane, or by poison or by inhaling gas or vapor, or while under the influence of intoxicants or narcotics then the amount to be paid shall be one-tenth (1/10) of the principal sum or $500.

Defendant states that said James Whitfield died from bodily injuries caused by a pistol shot intentionally fired by himself for the purpose thereby of taking his own life; that the cause of the death of said Whitfield was suicide.

13 Defendant states that under the provisions of said policy it is liable to plaintiff in the sum of $500; that this is the full sum it contracted to pay plaintiff in the event the death of said Whitfield was caused by suicide or by intentional injuries inflicted upon himself; that it is now ready and willing and tenders the plaintiff said amount; that it has always been ready and willing to pay said sum and prior to the institution of this suit tendered said sum to plaintiff and defendant now offers to let judgment go against it for said sum of $500.

Wherefore *plaintiff* prays that judgment be entered herein in favor of plaintiff and against defendant for the sum of $500 and that the costs of this proceeding be taxed against the plaintiff.

JONES, JONES & HOCKER AND
L. C. BOYLE,
Attorneys for Defendant.

Thereafter, to-wit, on the 23rd day of December, 1902, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INS. CO.

This day comes plaintiff by her attorneys and files demurrer to defendant's answer.

Thereafter, to-wit, on the 4th day of May, 1903, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INS. CO.

Now on this day the demurrer to the answer coming on for hearing the same is argued by counsel and submitted to the Court.

Thereafter to-wit, on the 8th day of May, 1903, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INS. CO.

The demurrer to the answer having been heretofore submitted to the court and taken under advisement, now the Court being fully advised in the premises doth order that said demurrer be overruled with leave to plaintiff to file reply by Monday next.

14 Thereafter, to-wit, on the 21st day of May, 1903, the following entry appeared of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INS. CO.

This day come the parties by their attorneys, the plaintiff by Frank Hagerman, and the defendant by Jones, Jones & Hocker and L. C. Boyle. Thereupon plaintiff files reply, and the defendant files motion to strike out parts thereof, and the same being submitted the same is sustained. Thereupon the parties file a stipulation waiving a jury, and an agreed statement of facts, whereupon this case is submitted to the Court and by the Court taken under advisement.

Said reply is in words and figures as follows, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City.

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Reply.

Now comes plaintiff and for reply to the answer of defendant admits that James Whitfield died from bodily injuries caused by a pistol shot fired by himself and the cause of his death was suicide but said shot was fired and said suicide committed at a time when he was in such a condition of mind that he was incapable of realizing or knowing, and when he did not realize or know, what he was doing or the consequences of his act.

Wherefore plaintiff prays as in the petition.

FRANK HAGERMAN,
Attorney for Plaintiff.

Said jury waiver is in words and figures as follows, to-wit:

No. 2698.

WHITFIELD
vs.
INS. CO.

For the purposes of a trial at this time, a jury is waived, this waiver not to apply to any future trials.

FRANK HAGERMAN,
Att'y for Pl'ff.
JONES, JONES & HOCKER,
BOYLE, GUTHRIE & HURT,
Att'ys for Def't.

15 Thereafter, to-wit, on Monday, the 2nd day of November, 1903, the same being a day of the regular November Term of said court, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INSURANCE COMPANY.

This cause having been heretofore submitted to the Court and taken under advisement, now the court being fully advised in the premises doth file the following finding of facts:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

This cause coming on for hearing, and the parties by stipulation having waived a trial by jury, the same was taken up and submitted by the respective counsel to the court on the following agreed statement of facts, to-wit:

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Partial Agreed Statement of Facts.

1. Amanda M. S. Whitfield is now, and was at the time of the institution of this suit, a citizen and resident of the Western District of Missouri, and was at the time of the issuance of the policy hereinafter [referred] to, and at the time of the death of James Whitfield, the wife of the said James Whitfield and is now his widow.

2. Defendant was, at the time of the issuance of the policy hereinafter mentioned, and has ever since been, a corporation, organized and existing under the laws of the state of Connecticut, engaged in the life and accident insurance business and is now, and was at all the times hereinafter named, qualified to do business in the state of Missouri, having fully complied with the laws thereof, obtaining and holding a certificate and license to do business therein.

3. In consideration of the payment to it of the premium therein named, defendant did, on November 3rd, 1900, issue execute and deliver to James Whitfield at Kansas City, Missouri, a policy
16 of insurance in the words set forth in the form of the policy set forth in the petition filed herein which is hereby made part hereof. Said policy was from time to time and continuously renewed by the payment of quarterly premiums in advance, so that

the same was in full force and effect at the time of the death of James Whitfield.

4. On April 7th, 1902, while said policy was in full force at Kansas City, Missouri, said James Whitfield died from bodily injuries caused by a pistol shot intentionally fired by himself, for the purpose of thereby taking his own life; that the cause of the death of said Whitfield was suicide.

5. Immediately upon the death of James Whitfield the plaintiff gave notice in writing to defendant, in compliance with the terms of the policy, and demanded payment of the amount thereof, and afterwards, at defendant's request, on May 3rd, 1902, gave a more detailed proof, and defendant then made its own investigation and waived any further proof, and within the time limited in the policy offered to pay and tendered to plaintiff the sum of five hundred dollars ($500.00) as the full amount due by virtue of section 5 of the policy, which sum plaintiff then and has ever since, refused, and defendant then and there and ever since has refused to pay any further sum, although it was demanded by the plaintiff.

6. Defendant now tenders and offers to pay plaintiff or into court for her use the sum of $500.

7. Either party may introduce any further evidence, not contradictory of this stipulation, that may be competent and material to the issues herein, but it shall not be deemed contradictory of this stipulation for the plaintiff to prove, if she can and desires so to do, that at the time said Whitfield killed himself, he was not in such condition of mind to realize what he was doing or know the consequences of his act.

JONES, JONES & HOCKER AND
LOUIS C. BOYLE,
Attorneys for Defendant.
FRANK HAGERMAN,
Attorney for Plaintiff.

8. The Court further finds the fact to be that neither party introduced any further evidence pursuant to the provisions of paragraph 7 of the agreed statement of facts.

9. On the foregoing facts the Court declares the law to be that the plaintiff is not entitled to recover the sum of five thousand dollars on the policy sued on, but the plaintiff is entitled to re-
17 cover of the defendant the sum of five hundred dollars with costs.

Judgment accordingly.

(Signed) JNO. F. PHILIPS, *Judge.*

It is therefore, considered, ordered and adjudged by the Court that the plaintiff Amanda M. S. Whitfield, have and recover of the defendant Aetna Life Insurance Company of Hartford, Connecticut, said sum of five hundred dollars ($500.00) so found to be due together with her costs herein laid out and expended and have thereof execution.

Thereafter, to-wit, on the 25th day of November, 1903, the following entry appears of record in the above entitled case:

2698.

AMANDA M. S. WHITFIELD
against
AETNA LIFE INSURANCE CO.

This day comes plaintiff by her attorney and files assignment of errors, and presents a bill of exceptions and a bond for writ of error. Thereupon said bill of exceptions is allowed and signed and said bond approved and the same are ordered to be filed and made a part of the record herein. Whereupon a citation is signed and a writ of error allowed.

Said assignment of errors is in words and figures as follows, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City.

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Assignment of Errors.

Now comes plaintiff and files this, her assignment of errors preparatory to removing this case to the Circuit Court of Appeals upon writ of error. This Court erred in each of the following respects:

1. In sustaining the motion of defendant to strike out a portion of the reply of plaintiff, which portion so stricken out is in words and [fig-res] as follows:

"But said shot was fired and said suicide committed at a time when he was in such a condition of mind that he was incapable of realizing or knowing, and when he did not realize or know, what he was doing or the consequences of his act."

18 2. The court erred in rendering judgment upon the agreed statement of facts and its special finding for five hundred dollars ($500.00).

3. The court erred in not rendering judgment upon the agreed statement of facts and special finding in excess of five hundred dollars ($500.00).

4. The court erred in not rendering judgment for five thousand dollars ($5000.00) and interest upon the agreed statement of facts and special finding.

5. The court erred in holding that under the facts as found and as agreed upon plaintiff was limited in her recovery to five hundred dollars ($500.00).

6. The court erred in holding that under Section 7896 of the Re-

vised Statutes of Missouri, 1899, the defendant could, upon the policy in suit, limit its liability in case of suicide to five hundred dollars ($500.00).

FRANK HAGERMAN,
Att'y for Plaintiff.

Said Bill of Exceptions is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY, Defendant.

Bill of Exceptions.

Be it remembered, that on the 21st day of May, at the April term of court, 1903, the defendant presented motion to strike out portion of the plaintiff's reply, which motion was in words and figures, as follows, to-wit:

In the United States Circuit Court for the Western Division of the Western District of Missouri, at Kansas City.

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant.

Now at this date comes the defendant and moves the court to strike out all of that part of the reply heretofore filed in this case, beginning with the twelfth word of the third line, and ending
19 with the last word of the seventh line, which reads as follows:
"But said shot was fired and said suicide committed at a time when he was in such a condition of mind that he was incapable of realizing or knowing and when he did not realize or know what he was doing or the consequences of his act."

For reason for this motion the defendant shows the court that such part of said reply is incompetent and irrelevant and pleads no valid excuse for the defense set up in the defendant's answer.

BOYLE, GUTHRIE & HURT,
JONES, JONES & HOCKER,
Attorneys for Defendant.

which motion was then and there sustained by the Court, to which action of the Court the plaintiff at the time excepted; thereafter to-wit, on May 21, 1903, a jury being waived, the parties filed herein an agreed statement of facts, which appears from the records herein, and on the same day the cause was submitted to, and taken under

advisement by the court, and on the 2nd day of November, 1903, at the November term, 1903, the court made its finding and rendered judgment on the finding of facts as appears by the record herein.

And now on this 25th day of November, 1903, at the November term, 1903, of said court, the plaintiff tenders her Bill of Exceptions, which is now signed and made a part of the records herein.

(Signed) JNO. F. PHILIPS, *Judge.*

Said bond for writ of error is in words and figures as follows, to-wit:

UNITED STATES OF AMERICA, *sct:*

Know all men by these presents, that we, Amanda M. S. Whitfield, as principal and John D. Swan of Jackson Co., Mo. as surety, are held and firmly bound unto Aetna Life Insurance Company of Hartford, Connecticut in the full and just sum of three hundred dollars to be paid to the said Aetna Life Insurance Company its heirs, executors, administrators or assigns, to which payment well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals, and dated this 23rd day of November in the year of our Lord, one thousand nine hundred and three.

Whereas, lately at the November 1903 term of the Circuit Court of the United States for the Western Division of the Western District of Missouri, in a suit depending in said court between Amanda
20 M. S. Whitfield, plaintiff and Aetna Life Insurance Company of Hartford, Connecticut, defendant, judgment was rendered against the said company but for a less amount than claimed by plaintiff who has obtained a writ of error of the said Court to reverse the judgment in the aforesaid suit, and a citation directed to the said defendant, citing and admonishing it to be and appear in the United States Circuit Court of Appeals for the Eighth Circuit, at the city of St. Louis, Missouri, sixty days from and after the date of said citation.

Now the condition of the above obligation is such, that if the said Amanda M. S. Whitfield shall prosecute said writ of error to effect, and answer all damages and costs if she fail to make good her plea, then the above obligation to be void, else to remain in full force and virtue.

AMANDA M. S. WHITFIELD. [SEAL.]
JOHN D. SWAN. [SEAL.]

Signed and sealed in presence of

WM. C. WHITFIELD.

The above bond is hereby approved and ordered to be filed and made a part of the record.

(Signed) JNO. F. PHILIPS, *Judge.*

UNITED STATES OF AMERICA, *Western District of Missouri, ss:*

John D. Swan, obligor in the within bond, being duly sworn, on his oath deposes and says that he resides as stated therein, and is worth, over and above all his debts and liabilities the sum of one thousand dollars, and that he owns real and personal property to that amount, subject to execution, in the state of Missouri.

JOHN D. SWAN.

Subscribed and sworn to before me this 23rd day of November, A. D. 1903.

[SEAL.] OSCAR HOCHLAND,
Notary Public, Jackson County, Mo.

The opinion filed herein is in words and figures as follows, to-wit:

In the Circuit Court of the United States for the Western Division of the Western District of Missouri.

No. 2698.

AMANDA M. S. WHITFIELD, Plaintiff,
vs.
AETNA LIFE INSURANCE COMPANY, Defendant.

Opinion by Philips, D. J.

The question to be decided is, whether, upon the agreed statement of facts, the plaintiff is entitled to recover the sum of five
21 thousand dollars, the principal sum designated at the head of the insurance policy, or the sum of five hundred dollars, specified in the contract as the sum recoverable where the death of the assured resulted from injuries voluntarily inflicted upon himself by a pistol shot. The decision turns upon the proper construction of Section 7896 of the Revised Statutes of Missouri, of 1899, which declares that

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void."

It is conceded, in the absence of this express statutory provision, that at common law suicide, voluntarily inflicted by the assured would constitute a complete defense to the action on the policy contract. The statute in question simply declares that "it shall be no defense that the insured committed suicide" in a suit upon such policy.

In Logan *vs.* Fidelity & Casualty Company, 146 Mo. 114, the Su-

preme Court held that said section of the statute applies to an accident policy on life as well as to an ordinary life insurance policy.

As this statute is in derogation of the common law right of defense, it is not to be extended beyond the letter and spirit of the statute. It does not undertake to declare that under an accident policy, involving a great variety of accidents resulting in death, as does the policy in question, parties may not stipulate for the payment of a specified sum in the event of death resulting from suicide. It simply declares that the fact of suicide shall constitute no defense to the suit. It is to be presumed that the term "defense" was employed by the legislature in its ordinary and natural import. By express provision of the state statute (Sec. 4160) it is declared that in the construction of statutes of this state, unless such construction be plainly repugnant to the intent of the legislature or the context of the same statute, "words and phrases shall be taken in their plain or ordinary or usual sense; but technical words and phrases having a peculiar and appropriate meaning in law shall be understood according to their technical import." In law, "defense" is "that which is offered and alleged by the party proceeded against in an action or suit, as a reason in law or fact why the plaintiff should not recover or establish what he seeks; what is put forward to defeat an action." Black's Law Dictionary. "The denial of the truth or validity
22 of the complaint. A general assertion that the plaintiff has no ground of action." Bouvier's Law Dictionary.

To say that when the defendant insists that on the face of the very contract sued on its liability in case of suicide, is limited to $500.00, is some defense, and, therefore, is in contravention of the term "it shall be no defense," is, with all due respect, to juggle with mere words without regard to the meaning. The term "it shall be no defense" is grammatically the equivalent of it shall not be a defense. It means no more and no less. In law it means that the given fact of death by suicide shall not bar an action on the policy.

The statute does not undertake to say that parties making a contract of insurance shall not agree upon the amount or compensation to be paid by the insurance company, in the event of death resulting from suicide. Why parties to such contract may not agree upon a stipulated amount, to be paid in case of death resulting from suicide, as well as death resulting from an accident on a railroad car, or occurring in a burning building (which under this policy is made double the amount of the principal liability) is not apparent. As said by the court in Baltimore R. *vs.* Voigt, 176 U. S. 498.

"The right of private contract is no small part of the liberty of the citizen, and that the usual and most important function of courts of justice is rather to maintain and enforce contracts, than to enable parties thereto to escape from their obligation on the pretext of public policy, unless it clearly appear that they contravene public right or the public welfare."

"No statute is to be construed as altering the common law, farther than its words import. It is not to be construed as making any innovation upon the common law which it does not fairly express." Shaw *vs.* Railroad Company, 101, U. S. 565.

In Hadden *vs.* Collector, 5th Wall. 107-111, the court said:

"What is termed the policy of the government with reference to any particular legislation is generally a very uncertain thing, upon which all sorts of opinions, each variant from the other, may be formed by different persons. It is a ground much too unstable upon which to rest the judgment of the court in the interpretation of statutes."

So in Scott *vs.* Reid, 10 Peters 524-527, the Court said:

"Where the language of the act is explicit, there is great danger in departing from the words used, to give an effect to the law which may be supposed to have been designed by the legislature.
23 * * * It is not for the court to say, where the language of the statute is clear, that it shall be so construed as to embrace cases, because no good reason can be assigned why they were excluded from its provisions."

The only limitation in the language of the statute in question is that in case of death resulting from suicide it shall constitute no defense against liability on the policy; that is to say, it shall not defeat a right of recovery to the extent of the sum stipulated for in the policy. The innovation, in short, made by the statute was to cut off a defense based upon the fact that the assured committed suicide, without undertaking to interfere with the right of contract between parties, *sui juris* as to the extent of liability in case of death resulting from the specific cause.

The purpose of fixing in the caption of the policy a principal liability of five thousand dollars becomes evident under a policy like the one in question, which provides that in case of certain physical disabilities resulting from accidental causes there shall be a specified amount per week. Under such provision if there were no principal liability expressed, as the disability would be continuous, as in case of the loss of a hand, or foot, or an eye, the recovery might run on without limit during the life of the insured, and in the aggregate far exceed the sum of five thousand dollars, the principal sum.

The Supreme Court of this state has not construed the statute in question in the particular here involved. The Logan case, *supra*, does not bind or control this court except insofar as the question involved in that case was determined by the Supreme Court, which was simply whether or not the section of the statute above quoted applies to the instance of death by suicide on an accident policy as well as to other life insurance policies. Under the well recognized rule that the language employed by courts in construing statutes can have no binding effect in other litigation beyond the essential matter considered and determined in the former case, any discussion by the court in the Logan case must be restrained to the fitness of the matter under consideration.

The decision of the Court of Appeals of this state in Keller *vs.* Traveler's Insurance Company, 58 M. A. 557, is not binding upon this court, as it is not a court of the highest jurisdiction in the state. It is not maintainable that the statute in question establishes any public policy of the state beyond its expression, that is that suicide shall constitute no defense against liability of the company on an

accident insurance policy. As already suggested the statute does not undertake to declare that an insurance company may not issue a policy of insurance by which the parties agree that in case of death resulting from suicide what the amount of recovery shall be. I cannot perceive why the legislature should deem it contrary
24 to the public policy of the state to permit the insured to agree with the insurance company by contract that in the event of death resulting from a voluntary act of suicide what amount should be paid by the insurer. Looking at the language of the statute and taken in its legal technical sense, in my humble opinion, nothing more was intended than that in view of the fact that insurance companies under like policies had successfully interposed as a complete defense against any liability that the insured had taken his own life, hereafter no such defense should avail to defeat a recovery. As the legislature has gone no further in the assertion of the state policy, the courts ought not to undertake by mere judicial assertion to extend the operation of the statute.

In reply to the suggestion that the foregoing construction of the statute would authorize a practical evasion of its spirit by recognizing the right of the contracting parties to limit the amount of recovery to one dollar, it should be enough to say that illustrations are often dangerous in the construction of statutes. It is sufficient for the court to decide the particular case on trial. It is hardly conceivable that a party aware of his rights under the statute, and the law presumes him to be cognizant thereof, would consent to accept as compensation for such loss the sum of one dollar; and if he should it would be for the court to decide whether such inconsequential sum was not a practical evasion of the spirit of the statute. The sum of five hundred dollars, provided for in this case, is a substantial sum; and as the pleading of the contract in question, voluntarily entered into by the parties, goes merely to the question of the amount of the recovery, and not to defeat a recovery, my conclusion is that the plaintiff is only entitled to recover the sum of five hundred dollars.

UNITED STATES OF AMERICA, *act:*

I, Adelaide Utter, Clerk of the Circuit Court of the United States for the Western Division of the Western District of Missouri, do hereby certify that the above and foregoing is a full, true and complete copy of the record, assignment of errors, and all proceedings in the cause wherein Amanda M. S. Whitfield is plaintiff and Aetna Life Insurance Company is defendant as fully as the same appears on file and of record in my office.

Witness my hand as clerk and the seal of said Court. Done at office in Kansas City, Missouri, this 3rd day of December, 1903.

[Seal of the United States Circuit Court for the Western District of Missouri, Western Division.]

ADELAIDE UTTER, *Clerk.*

Filed Dec. 7, 1903.
JOHN D. JORDAN, *Clerk.*

25 *(Clerk's Certificate to Printed Record.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing printed record of twenty-four pages in the case of Amanda M. S. Whitfield, Plaintiff in Error, *vs.* Aetna Life Insurance Company of Hartford, Connecticut, No. 2013, was printed under my supervision and is identical with the printed record upon which said cause was heard and decided in the Circuit Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Circuit Court of Appeals, at office in the City of St. Louis, Missouri, in the Eighth Circuit, this tenth day of April, A. D. 1906.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

26 Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit, at the December Term, 1905, of said Court, begun and held at the City of St. Louis, Missouri, on the first Monday in December, to-wit: the fourth day of December, A. D. 1905, before the Honorable Willis Van Devanter and the Honorable William C. Hook, Circuit Judges, and the Honorable William Lochren, District Judge.

Attest:

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the seventh day of December, A. D. 1903, a transcript of record, pursuant to a writ of error directed to the Circuit Court of the United States for the Western District of Missouri, was filed in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein Amanda M. S. Whitfield was Plaintiff in Error, and the Aetna Life Insurance Company of Hartford, Connecticut, was Defendant in Error, which said transcript of record was filed and docketed in said Circuit Court of Appeals as No. 2013.

That thereafter the following proceedings were had in said cause, in said Circuit Court of Appeals, viz:

27 (*Appearance of Mr. Frank Hagerman as Counsel for the Plaintiff in Error.*)

On the eighth day of December, A. D. 1903, the appearance of Mr. Frank Hagerman as counsel for the plaintiff in error was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

The Clerk will enter my appearance as Counsel for the Plaintiff in Error.

FRANK HAGERMAN.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2013. Amanda M. S. Whitfield, Pl'ff in Error, *vs.* Aetna Life Insurance Company. Appearance. Filed Dec. 8, 1903, John D. Jordan, Clerk. Frank Hagerman, Counsel for Pl'ff in Error.

(*Appearance of Mr. James C. Jones and Mr. Lon O. Hocker as Counsel for the Defendant in Error.*)

And on the twenty-sixth day of January, A. D. 1904, the appearance of Mr. James C. Jones and Mr. Lon O. Hocker as counsel for the defendant in error was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

The Clerk will enter my appearance as Counsel for the Defendant in Error.

28

JAMES C. JONES.
LON O. HOCKER.
JONES, JONES & HOCKER.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2013. Amanda M. S. Whitfield, Pl'ff in Error, *vs.* Aetna Life Insurance Company. Appearance. Filed Jan. 26, 1904, John D. Jordan, Clerk. James C. Jones, Lon O. Hocker, Counsel for Def't in Error.

(Appearance of Mr. L. C. Boyle and Mr. W. F. Guthrie as Counsel for Defendant in Error.)

And on the twenty-seventh day of January, A. D. 1904, the appearance of Mr. L. C. Boyle and Mr. W. F. Guthrie as counsel for the defendant in error was filed in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

The Clerk will enter my appearance as Counsel for the Defendant in Error.

L. C. BOYLE.
W. F. GUTHRIE.

(Endorsed:) U. S. Circuit Court of Appeals, Eighth Circuit. No. 2013. Amanda M. S. Whitfield, Pl'ff in Error, *vs.* Aetna Life Insurance Company. Appearance. Filed Jan. 27, 1904, John D. Jordan, Clerk. L. C. Boyle, W. F. Guthrie, Counsel for Def't in Error.

(Order of Submission.)

And on the sixteenth day of May, A. D. 1904, in the record of the proceedings of said Circuit Court of Appeals is an order of submission in said cause, in the words and figures following, to-wit:

29 United States Circuit Court of Appeals, Eighth Circuit, May Term, 1904.

MONDAY, *May* 16, 1904.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY.

In Error to the Circuit Court of the United States for the Western District of Missouri.

This cause having been called for hearing in its regular order, argument was commenced by Mr. Frank Hagerman for Plaintiff in Error and concluded by Mr. James C. Jones for Defendant in Error. Thereupon, this cause was submitted to the Court on the transcript of record from said Circuit Court and the briefs of counsel filed herein.

(*Opinion.*)

And on the seventh day of March, A. D. 1906, an opinion of said Circuit Court of Appeals was filed in said cause, in the words and figures following, to-wit:

30 United States Circuit Court of Appeals, Eighth Circuit.

No. 2013. December Term, A. D. 1905.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY, Defendant in Error.

In Error to the Circuit Court of the United States for the Western District of Missouri.

Mr. Frank Hagerman for plaintiff in error.
Mr. James C. Jones (Mr. Lon O. Hocker, Mr. L. C. Boyle, Mr. W. F. Guthrie, Mr. L. F. Davison and Mr. C. G. B. Drummond, were with him on the brief) for the defendant in error.

Before Van Devanter and Hook, Circuit Judges, and Lochren, District Judge.

Syllabus.

INSURANCE ON LIFE—PRO-SUICIDE STATUTE OF MISSOURI—CONSTRUCTION.—Sec. 7896 Rev. St. Mo. 1899, which provides: "In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void," being in derogation of the common law, in restraint of the freedom of contract and subversive of sound morality, should receive a re-trictive rather than an expansive construction and when so construed it prevents the suicide of an insured, whether sane or insane, from avoiding his insurance, either by operation of law or by stipulation of the parties, unless the act was contemplated by him at the time of making application for the policy, but it does not take from the parties the right to contract respecting the classification of risks and the amount of insurance which shall be provided for each, so long as they do not substantially eliminate suicide from the risks covered by any policy to which the statute is applicable.

Statement.

On the 3rd day of November, 1900, the Aetna Life Insurance Company, a corporation created under the laws of Connecti-
31 cut and doing business in the State of Missouri, issued in the latter State to James Whitfield, a citizen of that State, a policy of accident insurance, the material portions of which are as follows:

"Twentieth Century Combination.

Principal Sum $5000.00 Accident Policy. Premium $6.25.

"The Aetna Life Insurance Company, of Hartford, Conn., in consideration of the warranties made in the application for this insurance and of the sum of six 25/100 dollars, does hereby insure James Whitfield of the town of Kansas City, County of Jackson, State of Missouri, under classification Preferred, being a sporting editor K. C. Star by occupation, for the term of 3 months from the 29th day of Nov. 1900 (commencing and ending at twelve o'clock, noon standard time) in the sum of twenty-five no/100 dollars per week indemnity against loss of time resulting from bodily injuries effected, during the term of this insurance, through external, violent, and accidental means, which shall independently of all other causes, immediately, continuously and wholly disable him from prosecuting any and every kind of business pertaining to his occupation, above stated; or if such injuries shall not wholly disable the insured, as above, but shall immediately, continuously, and wholly disable him from the performance of one or more important daily duties pertaining to his occupation, or if, followed by a period of total disability resulting from such injuries, he shall be in like manner partially disabled, the company will pay two-fifths of the weekly indemnity herein provided for total disability for the period of such partial disability, but not for more than twenty-six consecutive weeks of partial disability, nor will payments be made for total disability or total and partial disability combined exceeding in amount the principal sum insured by this policy as stated in clause 'E.' * * *

"*a.* If such injuries alone result within ninety days in loss by removal of both hands at or above the wrists, or both feet at or above the ankles, or one hand and one foot at those places, or the irrecoverable loss of the entire sight of both eyes, then the insured shall be paid the full principal sum, insured in lieu of weekly indemnity as herein provided, and this policy shall thereupon cease and be surrendered to the company.

"*b.* If such injuries alone result within ninety days in loss by removal of right hand at or above the wrist, or either leg at or above the knee the insured shall be paid one-half the principal sum insured in lieu of weekly indemnity as herein provided, and this policy shall cease and be surrendered to the company.

"*c.* If such injuries alone result within ninety days in loss by removal of the left hand at or above the wrist, or either foot at or above the ankle, the insured shall be paid one-fifth the principal sum in-

sured in lieu of weekly indemnity as herein provided, and this policy shall cease and be surrendered to the company.

"*d.* If such injuries alone result within ninety days in the irrecoverable loss of the entire sight of one eye, the insured shall be paid one-eighth the principal sum insured in lieu of weekly indemnity as herein provided.

"*e.* If death results solely from such injuries within ninety days, the said Company will pay the principal sum of five thousand no/100 dollars to Amanda M. S. Whitfield, his wife, if living; and
32 in the event of the death of the said beneficiary before the death of the insured, to the executors, administrators, or assigns of the insured.

"*f.* If injuries are sustained by means as aforesaid, (1) while the insured is riding as a passenger in or on any public passenger conveyance, using steam, compressed air, gasoline, cable or electricity as a motive power, or (2) while riding in a regular passenger elevator, or (3) while riding a bicycle (not in a race for prize or purse, concerning which risk, see condition two), or (4) in consequence of the burning of a building in which the insured shall be at the commencement of the fire, the amount to be paid shall be double the sum specified in the clause under which claim is made, subject to all the conditions of this policy.

This policy is issued and accepted subject to the following conditions: * * *

"2. If the insured is * * * accidentally injured while riding a bicycle in a race for prize or purse, the amounts payable will be one-third of the double benefits provided by clause '*f*' hereof.

"3. * * * Clause '*f*' above shall not apply to accidents happening while the insured is boarding or alighting from a street car.

"4. In the event of death, loss of limb or sight, or disability due to sunstroke or freezing; or due to unnecessary exposure to obvious risk of injury or obvious danger; or due to contact with poisonous substances other than to the septic poisoning of wounds accidentally inflicted; or due to hernia, the result of an accident happening subsequent to the issue of this policy; or in event of death following bodily injuries of which there existed no external or visible mark upon the body of contusion or wound sufficient to cause death (accidental drowning only excepted), and an autopsy showed that such injuries contributed materially to the death of insured, then in all such cases referred to in this paragraph, the limit of this Company's liability shall be one-fifth the amount otherwise payable under this policy, anything to the contrary in this policy notwithstanding.

"5. In event of death, loss of limb or sight, or disability due to injuries intentionally inflicted upon the insured by any other person (except assaults committed for the sole purpose of burglary or robbery), whether such other person be sane or insane, or under the influence of intoxicants or not; or due to injuries received while fighting or in a riot; or due to injuries intentionally inflicted upon the insured by himself; or due to suicide, sane or insane; or due to the taking of poison, voluntarily or involuntarily, or the inhaling of any gas or vapor; or due to injuries received while under the influ-

ence of intoxicants or narcotics, then in all such cases referred to in this paragraph, the limit of the company's liability shall be one-tenth the amount otherwise payable under this policy, anything to the contrary in this policy notwithstanding."

By the regular payment of quarterly premiums in advance the policy was continued in force until and including the 7th day of April, 1902, when the insured died from bodily injuries caused by a pistol shot intentionally fired by himself for the purpose of thereby taking his own life, the death being due to suicide. Amanda M. S. Whitfield, the beneficiary in the event of death, gave due notice and made due proofs of the death and demanded payment of the policy. The company tendered to her $500 as the amount
33 stipulated to be paid in the event of death by suicide, but she refused to accept that sum and brought an action upon the policy. The trial was — to the court, under a written stipulation waiving a jury, and resulted in a special finding of the facts here stated, upon which judgment was given for the plaintiff in the sum of $500. 125 Fed. 269. She sought to recover $5000, and in furtherance of that claim prosecutes this writ of error.

VAN DEVANTER, Circuit Judge, after stating the case as above, delivered the opinion of the court:

The only question arising upon this record is, whether the court failed to give proper effect to the statute of Missouri which provides:

"In all suits upon policies of insurance on life hereafter issued by any company doing business in this state, to a citizen of this state, it shall be no defense that the insured committed suicide, unless it shall be shown to the satisfaction of the court or jury trying the cause, that the insured contemplated suicide at the time he made his application for the policy, and any stipulation in the policy to the contrary shall be void." (Rev. St. 1899, Sec. 7896).

As the policy was issued and delivered in Missouri to one of her citizens by a company doing business in that state, there can be no question but that effect must be given to the statute, if it is applicable to a policy, like the one here sued upon, which insures against death resulting solely from injuries effected through external, violent and accidental means; and that it is applicable to such a policy is determined in Logan *v.* Fidelity and Casualty Co., 146 Mo. 114. But that our reference to that cause may not be misunderstood, it may be properly observed that we do not understand it as holding that, by reason of the statute, every policy of insurance on life, issued by a company doing business in Missouri to a citizen of that state, covers death by suicide irrespective of the scope or character of the policy. To illustrate, we do not understand it as holding that the effect of the statute is, that an insurance against death resulting from a particular disease or from the hazards of a particular employment or mode of travel is also an insurance against death by suicide. Rightly considered, the holding in this respect is nothing more than that the statute is applicable to insurance against loss of life by external, violent and accidental means because this, as was held in

Accident Ins. Co. *v.* Crandal, 120 U. S. 527, 533, 534, includes suicide by one who is insane. That this is so is shown, as we think, by the court's statement (p. 120) of the sole question presented for decision, viz:

"Is suicide in this State a valid defense to an action upon a policy of insurance issued by an accident insurance company, containing provisions such as the one in controversy, where it is not shown that the insured contemplated suicide at the time he made his application for the policy (*and it being admitted that the assured afterwards came to his death from external violent and accidental means*)?"

And by that portion of the opinion (p.123) in which it is said:

"When a policy covers loss of life from external, violent and accidental means alone, why is it not insurance on life? Such a provision incorporated in a general life insurance policy admittedly would be insurance on life, then why less insurance on life be-
34 cause not coupled with provisions covering loss of life from unusual or natural causes as well? If one holds a general life policy and an accident policy, and is killed by lightning or commits suicide, *so that he may be said to have died by accidental means*, both the companies should pay, and the stipulation against liability in the event of suicide in the policies should be no more a defense against the suit upon the accident policy, providing against death from accidental cause, than against the policy which goes further and covers death from other causes as well."

But the question arising upon this record is not solved by ascertaining that the statute is applicable to the policy sued upon. It must also be ascertained whether, apart from the qualifying clause, the effect of the statute is to prevent the suicide of an insured from operating as an avoidance of his insurance, either by operation of law or by reason of some stipulation in the policy; or whether it goes further and prevents all discrimination against suicide as a risk. If the latter be the correct view, as is asserted by the plaintiff, it follows logically that in a policy where the risks are classified and a distinct amount of insurance is provided for each class, suicide must be included among the risks for which the highest amount of insurance is provided, although the insured may not care to pay the cost of providing so much insurance for that risk or may deem it prudent to provide a larger amount of insurance for other risks. Either this is so or the parties are left free to contract respecting the classification of the risks and the amount of insurance which shall be provided for each, so long as they do not indirectly but substantially make suicide a defense to an action upon the policy.

We think there are insuperable objections to the plaintiff's contention.

The statute abrogates a common law defense and puts a restraint upon the freedom of contract. This alone indicates that it should receive a restrictive rather than an expansive construction. Brown *v.* Barry, 3 Dall. 365, 367; McCool *v.* Smith, 1 Black, 459, 470; Shaw *v.* Railroad Co., 101 U. S. 557, 565; Baltimore, etc., Ry. Co. *v.* Voigt, 176 U. S. 498, 505; Prescott, etc., Co. *v.* Atchison, etc., Co. 73 Fed. 438; Barry *v.* Snowden, 106 Fed. 571; Smith *v.* Spooner, 3 Pick.

229. But the occasion for avoiding an expansive construction is more apparent when it is considered that the statute makes the wilful self-destruction of the insured whilst sane an insurable risk, and that the restraint which it puts upon the right of the parties to contract according to their own judgment applies to that risk as well as to the risk of the insured dying by his own hand whilst insane. Knights Templar, etc., Co. *v.* Jarman, 44 C. C. A. 93, 104 Fed. 638; S. C., 187 U. S. 197. Of insurance against the insured's suicide whilst sane, it is said in Ritter *v.* Mutual Life Ins. Co., 169 U. S. 139, 154, in connection with an extended consideration of the authorities:

"When the policy is silent as to suicide, it is to be taken that the subject of the insurance, that is, the life of the assured, shall not be intentionally and directly, with whatever motive, destroyed by him when in sound mind. To hold otherwise is to say that the occurrence of the event upon the happening of which the company undertook to pay, was intended to be left to his option. That view is against the very essence of the contract.

"There is another consideration supporting the contention that death intentionally caused by the act of the assured when in sound mind—the policy being silent as to suicide—is not to be deemed to have been within the contemplation of the parties; that is, that a different view would attribute to them a purpose to make a contract that could not be enforced without injury to the public. A contract, the tendency of which is to endanger the public interests or injuriously affect the public good, or which is subversive of sound morality, ought never to receive the sanction of a court of justice or be made the foundation of its judgment. If, therefore, a policy—taken out by the person whose life is insured, and in which the sum named is made payable to himself, his executors, administrators or assigns—expressly provided for the payment of the sum stipulated when or if the assured, in sound mind, took his own life, the contract, even if not prohibited by statute, would be held to be against public policy, in that it tempted or encouraged the assured to commit suicide in order to make provision for those dependent upon him, or to whom he was indebted."

It hardly needs statement that a thing which is inherently subversive of sound morality is none the less so because sanctioned by statute, and yet if the statute violates no constitutional provision or principle effect must be given to it and the responsibility for its enactment and consequences must rest with the legislature. Courts, however, always avoid a construction which will render a statute subversive of sound morality, unjust, or absurd, if a more sensible construction can be given to it; and, if its terms be such that it must unavoidably lead to evil, unjust or absurd consequences, the courts give to it such effect only as is necessarily required by the clear import of its language. This is not rejecting or revising the action of the legislature but effectuating what is reasonably and conclusively presumed to be its real intent. United States *v.* Kirby, 7 Wall. 482; Holy Trinity Church *v.* United States, 143 U. S. 457, 459, 461; Lau Ow Bew *v.* United States, 144 U. S. 47, 59; *In re* Chapman, 166 U. S. 661, 667; Knowlton *v.* Moore, 178 U. S. 41, 77; Knights Templar,

etc., Co. *v.* Jarman, 187 U. S. 197, 201; St. Louis, etc., Co. *v.* Evans, etc., Co., 85 Mo. 307, 329; State *v.* Chyo Chiagk, 92 Mo. 395, 408; Verdin *v.* City of St. Louis, 131 Mo. 26, 163. And so it is to effectuate the true legislative intent that a statute in derogation of the common law or in restraint of the freedom of contract is held to make no change in the law which it does not fairly express.

Applying these rules of interpretation to the present statute, we think that while it prevents the suicide of an insured, whether sane or insane, from avoiding his insurance, either by operation of law or by stipulation of the parties, unless the act was contemplated by him at the time of making application for the policy, it leaves the parties free to contract respecting the classification of the risks and the amount of insurance which shall be provided for each, so long as they do not by that means indirectly but substantially make suicide a defense to an action upon the policy.

The contention to the contrary is rested upon the declaration that "it shall be no defense that the insured committed suicide," and is, that when a policy insures against death by one or more means in a specified amount and against death by suicide in a lesser amount, suicide is thereby made a partial defense to an action on the policy. We cannot assent to this view. To do so is to discard the rational and established rules of interpretation before stated. The statute does not say that the amount of insurance provided for in the
36 event of death by suicide shall not be less than is provided for when death results in some other way, nor that there shall be no discrimination of any kind against suicide as a risk. Nor is it an apt or natural way of expressing that thought to declare that it shall be no defense that the insured committed suicide, and that any stipulation to the contrary shall be void. In the absence of the statute an insured's suicide whilst sane avoids his insurance, not partially but completely, and, under the qualifying clause of the statute, that is still the effect of such self-destruction, if it was contemplated by the insured at the time he made application for the policy. Thus the defense which the statute is primarily designed to abrogate, as also the one which it still sanctions, is a complete and not a partial one. Moreover, we think it is altogether a mistaken use of the word defense to say that a policy which provides for insurance against death by one or more means in a specified amount and against death by another means in a lesser amount, makes death by the latter means a defense, partial or otherwise, to an action on the policy. On the contrary, such a policy accepts as a risk death by the latter means, and in the event of its occurrence gives a right of action against the insurer.

These considerations convince us that the statute does not abridge the freedom of contract further than to prevent the elimination of suicide from the risks covered by any policy to which it is applicable.

But it is said that if this be so the statute can be evaded and its purpose defeated by providing for the payment of some inconsiderable sum, such as one dollar, in the event of suicide. We think otherwise. That would be an indirect but substantial elimination of suicide from the risks covered by the policy and would be as much

within the inhibition of the statute as would be a stipulation directly declaring suicide to be a defense. We do not doubt that any policy falling within the operation of the statute must provide substantial insurance against suicide, but beyond this the freedom of contract is not affected.

It is also said that the courts of the State and this court have heretofore placed upon the statute a construction different from that given to it in this opinion, and the following cases are cited as sustaining the contention: Logan *v.* Fidelity and Casualty Co., 146 Mo. 114; Knights Templar, etc., Co. *v.* Berry, 1 C. C. A. 561, 50 Fed. 511; Knights Templar, etc., Co. *v.* Jarman, 44 C. C. A. 93, 104 Fed. 638; Kellar *v.* Traveler's Ins. Co., 58 Mo. App. 557. The first three contain no statement, discussion or decision of the question now under consideration. The policy sued upon in each attempted in terms or in effect to eliminate suicide from the risks covered by it and to provide that in the event of the death of the insured by that means the insurer would be liable only for the repayment of what it had received in the way of premiums or assessments. Thus instead of accepting suicide as a risk, the policy attempted to make it a ground for completely avoiding the right to any insurance. It is doubtful whether the policy sued upon in the other case is properly distinguishable from those just described, but, if it is, the case tends to sustain the plaintiff's contention, because it was there held by the St. Louis Court of Appeals, Judges Bond and Rombauer, that where a policy provides that the insurance in the event of the insured's suicide shall be less than when death results from other causes, it thereby makes suicide a partial defense to an action upon the
37 policy and in that respect is violative of the statute. We are unable to assent to that conclusion. The considerations before mentioned persuade us that it is clearly wrong, and as the St. Louis Court of Appeals, while of high repute, is not a court of last resort, whose decisions settle the law of the State, we must give effect to our own interpretation of the statute.

Looking at the present policy, the material portions of which have been heretofore set forth, we find that it is headed "Principal Sum $5000.00;" that in the event of injury not resulting in death it provides for certain payments graduated according to the circumstances, nature and extent of the injury, and that in the event of death it provides for the payment (*a*) of double the principal sum when death results from injury sustained while the insured is riding as a passenger in or on any public passenger conveyance, etc., (*b*) of the principal sum when death results from injuries not otherwise classified, (*c*) of two-thirds of the principal sum when death results from injury sustained while riding a bicycle in a race for prize or purse, (*d*) of one-fifth of the principal sum when death is due to sun-stroke, freezing, unnecessary exposure to obvious risks of injury, etc., (*e*) of one-tenth of the principal sum when death is due to injuries intentionally inflicted upon the insured by another or is due to suicide, sane or insane, etc. The classification of the several risks appears to be rational and honest, and the amount of insurance provided for the class which includes suicide is five hundred dollars, a very sub-

stantial sum when compared with six dollars and twenty-five cents, the premium paid. Considered in its entirety, the policy precludes any suggestion of a purpose to evade the statute.

The plaintiff places some reliance upon the particular language in which the parties have expressed their engagement and points out that one paragraph of the policy is so framed that, if not otherwise restrained, it creates a liability on the part of the insurer in the sum of five thousand dollars in the event of the death of the insured by any means covered by the policy, and that another paragraph is so framed that it reduces the liability to five hundred dollars in the event of death by suicide. This it is said indicates a purpose to make suicide a defense, to the extent of forty-five hundred dollars, to an action on the policy. There are two answers to this. One is, that the paragraph first named is not the whole policy, but only part of it, and that an action instituted to enforce that paragraph, regardless of the proper effect thereon of other paragraphs, would not in truth be an action on the policy but an inadmissible action on an inseparable portion of it. The other is, that as it was consistent with the statute for the parties to enter into an engagement whereby the amount of insurance provided for in the event of suicide was less than the amount provided for in the event of death by other means, it is immaterial in what particular language they have expressed that engagement.

Our conclusion is that the judgment was right and it is

Affirmed.

Filed March 7, 1906.

38 (*Judgment.*)

And on the seventh day of March, A. D. 1906, in the record of the proceedings of said Circuit Court of Appeals is a judgment in said cause, in the words and figures following, to-wit:

United States Circuit Court of Appeals, Eighth Circuit, December Term, 1905.

WEDNESDAY, *March* 7, 1906.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,

vs.

AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT.

In Error to the Circuit Court of the United States for the Western District of Missouri.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Western District of Missouri, and was argued by counsel.

On consideration Whereof, it is now here ordered and adjudged by this Court, that the judgment of the said Circuit Court, in this

cause, be, and the same is hereby, affirmed with costs; and that the Aetna Life Insurance Company of Hartford, Connecticut, have and recover against Amanda M. S. Whitfield the sum of twenty dollars for its costs herein and have execution therefor.

March 7, 1906.

39 *(Clerk's Certificate.)*

United States Circuit Court of Appeals, Eighth Circuit.

I, John D. Jordan, Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, do hereby certify that the foregoing thirteen pages contain full, true and complete copies of all the pleadings, proceedings and record entries, including the opinion of said Circuit Court of Appeals (except the transcript of the record from the Circuit Court of the United States for the Western District of Missouri), in a certain cause in said Court wherein Amanda M. S. Whitfield is Plaintiff in Error and the Aetna Life Insurance Company of Hartford, Connecticut, is Defendant in Error, as full, true and complete as the originals of the same remain on file and of record in my office.

In Testimony Whereof, I hereunto subscribe my name and affix the seal of said Circuit Court of Appeals, at office in the City of St. Louis, Missouri, in the Eighth Circuit, this tenth day of April, A. D. 1906.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

40 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the Honorable the Judges of the United States Circuit Court of Appeals for the Eighth Circuit, Greeting:

Being informed that there is now pending before you a suit in which Amanda M. S. Whitfield, is plaintiff in error, and Aetna Life Insurance Company of Hartford, Connecticut is defendant in error, which suit was removed into the said Circuit Court of Appeals by virtue of a writ of error to the Circuit Court of the United States for the Western District of Missouri, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said Circuit Court of Appeals and
41 removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court, as aforesaid, the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the

United States, the first day of May, in the year of our Lord one thousand nine hundred and six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Return to Writ.

UNITED STATES OF AMERICA, *Eighth Circuit, ss:*

In obedience to the command of the within writ of certiorari and in pursuance of the stipulation of the parties, a full, true and complete copy of which is hereto attached, I hereby certify that the transcript of record furnished with the application for a writ of certiorari in the case of Amanda M. S. Whitfield, Plaintiff in Error, *vs.* Aetna Life Insurance Company of Hartford, Connecticut, is a full, true and complete transcript of all the pleadings, proceedings and record entries in said cause.

In testimony whereof, I hereunto subscribe my name and affix the seal of the United States Circuit Court of Appeals for the Eighth Circuit, at office in St. Louis, Missouri, this fourth day of May, A. D. 1906.

[Seal United States Circuit Court of Appeals, Eighth Circuit.]

JOHN D. JORDAN,
Clerk U. S. Circuit Court of Appeals, Eighth Circuit.

42 In the Circuit Court of Appeals for the Eighth Circuit.

No. 2013.

AMANDA M. S. WHITFIELD, Plaintiff in Error,
vs.
AETNA LIFE INSURANCE COMPANY OF HARTFORD, CONNECTICUT, Defendant in Error.

Stipulation.

The parties hereby stipulate that the certified transcript of record on file in the Supreme Court of the United States may be taken as a return to the writ of certiorari issued May 1, 1906, and the Clerk of this Court may transmit a certified copy of this stipulation with his return to the said writ.

FRANK HAGERMAN,
Attorneys for Plaintiff in Error.
JONES, JONES & HOCKER,
Attorneys for Defendant in Error.

(Endorsed:) U. S. Circuit Court of Appeals. No. 2013. Amanda M. S. Whitfield, Plaintiff in Error, *vs.* Aetna Life Insurance Company. Stipulation as to Clerk's return to Writ of Certiorari. Filed May 4, 1906, John D. Jordan, Clerk.

43 [Endorsed:] 701, #20,203. May 7. File No. 20,203. Supreme Court of the United States. No. 701, October Term, 1905. Amanda S. Whitfield *et al., vs.* Aetna Life Insurance Co. of Hartford, Conn. Writ of Certiorari and return. Filed May 4, 1906. John D. Jordan, Clerk. Filed May 7, 1906.